

(A) Promptly make an initial written determination on any significant deficiencies and notify the contractor, in writing, providing a description of each significant deficiency in sufficient detail to allow the contractor to understand the deficiency;

(B) Request the contractor to respond in writing to the initial determination within 30 days; and

(C) Promptly evaluate the contractor's responses to the initial determination, in consultation with the auditor or functional specialist, and make a final determination.

(3) *Final determination.* (i) The contracting officer shall make a final determination and notify the contractor in writing that—

(A) The contractor's estimating system is acceptable and approved, and no significant deficiencies remain, or

(B) Significant deficiencies remain. The notice shall identify any remaining significant deficiencies, and indicate the adequacy of any proposed or completed corrective action. The contracting officer shall—

(1) Request that the contractor, within 45 days of receipt of the final determination, either correct the deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the deficiencies;

(2) Disapprove the system in accordance with the clause at 252.215-7002, Cost Estimating System Requirements; and

(3) Withhold payments in accordance with the clause at 252.242-7005, Contractor Business Systems, if the clause is included in the contract.

(ii) Follow the procedures relating to monitoring a contractor's corrective action and the correction of significant deficiencies in PGI 215.407-5-70(e).

(f) *System approval.* The contracting officer shall promptly approve a previously disapproved estimating system and notify the contractor when the contracting officer determines that there are no remaining significant deficiencies.

(g) *Contracting officer notifications.* The cognizant contracting officer shall promptly distribute copies of a determination to approve a system, disapprove a system and withhold pay-

ments, or approve a previously disapproved system and release withheld payments, to the auditor; payment office; affected contracting officers at the buying activities; and cognizant contracting officers in contract administration activities.

[63 FR 55040, Oct. 14, 1998, as amended at 67 FR 49252, July 30, 2002; 71 FR 69495, Dec. 1, 2006; 76 FR 28866, May 18, 2011]

#### **215.408 Solicitation provisions and contract clauses.**

(1) Use the clause at 252.215-7000, Pricing Adjustments, in solicitations and contracts that contain the clause at—

(i) FAR 52.215-11, Price Reduction for Defective Cost or Pricing Data—Modifications;

(ii) FAR 52.215-12, Subcontractor Cost or Pricing Data; or

(iii) FAR 52.215-13, Subcontractor Cost or Pricing Data—Modifications.

(2) Use the clause at 252.215-7002, Cost Estimating System requirements, in all solicitations and contracts to be award on the basis of cost or pricing data.

[63 FR 55040, Oct. 14, 1998, as amended at 72 FR 20760, Apr. 26, 2007; 73 FR 27472, May 13, 2008; 75 FR 48279, Aug. 10, 2010]

#### **215.470 Estimated data prices.**

(a) DoD requires estimates of the prices of data in order to evaluate the cost to the Government of data items in terms of their management, product, or engineering value.

(b) When data are required to be delivered under a contract, include DD Form 1423, Contract Data Requirements List, in the solicitation. See PGI 215.470(b) for guidance on the use of DD Form 1423.

(c) The contracting officer shall ensure that the contract does not include a requirement for data that the contractor has delivered or is obligated to deliver to the government under another contract or subcontract, and that the successful offeror identifies any such data required by the solicitation. However, where duplicate data are desired, the contract price shall include

## Defense Acquisition Regulations System, DOD

216.203–4–70

the costs of duplication, but not of preparation, of such data.

[63 FR 55040, Oct. 14, 1998, as amended at 71 FR 69495, Dec. 1, 2006]

## PART 216—TYPES OF CONTRACTS

### Subpart 216.1—Selecting Contract Types

Sec.

216.104–70 Research and development.

### Subpart 216.2—Fixed-Price Contracts

216.203 Fixed-price contracts with economic price adjustment.

216.203–4 Contract clauses.

216.203–4–70 Additional clauses.

### Subpart 216.3—Cost-Reimbursement Contracts

216.306 Cost-plus-fixed-fee contracts.

### Subpart 216.4—Incentive Contracts

216.401 General.

216.401–70 Data collection.

216.401–71 Objective criteria.

216.402 Application of predetermined, formula-type incentives.

216.402–2 Technical performance incentives.

216.403 Fixed-price incentive contracts.

216.403–1 Fixed-price incentive (firm target) contracts.

216.403–2 Fixed-price incentive (successive targets) contracts.

216.405 Cost-reimbursement incentive contracts.

216.405–1 Cost-plus-incentive-fee contracts.

216.405–2 Cost-plus-award-fee contracts.

216.405–2–71 Award fee reduction or denial for failure to comply with requirements relating to performance of private security functions.

216.405–270 Award fee reduction or denial for jeopardizing the health or safety of Government personnel.

216.406 Contract clauses.

216.470 Other applications of award fees.

### Subpart 216.5—Indefinite-Delivery Contracts

216.501 General.

216.501–1 Definitions.

216.501–2 General.

216.504 Indefinite-quantity contracts.

216.505 Ordering.

216.505–70 Orders under multiple award contracts.

216.506 Solicitation provisions and contract clauses.

### Subpart 216.6—Time-and-Materials, Labor-Hour, and Letter Contracts

216.601 Time-and-materials contracts.

216.603 Letter contracts.

216.603–2 Application.

216.603–3 Limitations.

216.603–4 Contract clauses.

### Subpart 216.7—Agreements

216.703 Basic ordering agreements.

AUTHORITY: 41 U.S.C. 421 and 48 CFR chapter 1.

SOURCE: 56 FR 36340, July 31, 1991, unless otherwise noted.

### Subpart 216.1—Selecting Contract Types

#### § 216.104–70 Research and development.

Follow the procedures at PGI 216.104–70 for selecting the appropriate research and development contract type.

[71 FR 39007, July 11, 2006]

### Subpart 216.2—Fixed-Price Contracts

#### 216.203 Fixed-price contracts with economic price adjustment.

##### § 216.203–4 Contract clauses.

(1) Generally, use the clauses at FAR 52.216–2, Economic Price Adjustment—Standard Supplies, FAR 52.216–3, Economic Price Adjustment—Semistandard Supplies, and FAR 52.216–4, Economic Price Adjustment—Labor and Material, only when—

(i) The total contract price exceeds the simplified acquisition threshold; and

(ii) Delivery or performance will not be completed within 6 months after contract award.

(2) Follow the procedures at PGI 216.203–4 when using an economic price adjustment clause based on cost indexes of labor or material.

[71 FR 39007, July 11, 2006]

#### 216.203–4–70 Additional clauses.

(a) *Price adjustment for basic steel, aluminum, brass, bronze, or copper mill products.* (1) The price adjustment clause at 252.216–7000, Economic Price Adjustment—Basic Steel, Aluminum, Brass,